IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

ITR No. 77 of 1990
Date of decision 4.4.2007

The Commissioner of Income Tax, Patiala .. Applicant

Versus

M/s Kuldip Industrial Corporation, Chandigarh .. Respondent

CORAM: HON'BLE MR. JUSTICE M.M. KUMAR
HON'BLE MR. JUSTICE RAJESH BINDAL

PRESENT: Mr.Vivek Seth, Advocate for Mr. Sanjeev Bansal, Advocate the petitioner
Mr. Rajesh Garg, Advocate for the revenue.

M.M.Kumar, J.

This order shall dispose of ITR Nos. 77, 78 ,83 and 93 of 1990. This Court while deciding ITC Nos. 88 and 89 of 1986 on 26.9.1988 (CIT Patiala v. M/s Kuldip Industrial Corporation Chandigarh) had issued directions under Section 256(2) of the Income Tax Act, 1961 (for brevity 'the Act') to the Income Tax Appellate Tribunal (for short 'the Tribunal') revenue to refer the following questions of law for the opinion of this Court:

i) Whether on the facts and in the circumstances of the case, the Appellate Tribunal was right in holding that the CIT (Appeals) could under Section 250(4) of the IT Act,1961 admit evidence of the death of Smt. Darshna Devi without giving any opportunity to the Income tax Officer to rebut the same are required under Rule 46A of the Income tax Rules, 1962;

ii) Whether on the facts and in the circumstances of the case, the Appellate Tribunal was right in holding that the Income tax Officer was given reasonable opportunity to examine/

rebut the evidence in the form of a death certificate of Smt. Darshna Devi;

iii) Whether on the facts and in the circumstances of the case, the Appellate Tribunal was right in holding that the finding of the CIT (Appeals) regarding genuineness of the firm was not questioned before the Appellate Tribunal;

iv) Whether on the facts and in the circumstances of the case, the Appellate Tribunal was right in holding that Smt. Darshna Devi could not be said to be the same person as Smt. Darshna Devi Gupta of Ambala;

v) Whether on the facts and in the circumstances of the case, the Appellate Tribunal was right in holding that the said Smt. Darshna Devi whose death certificate was relied upon by the assessee was same who was a partner of the assessee firm for the assessment year 1973-74; and

vi) Whether on the facts and in the circumstances of the case, the Appellate Tribunal was right in holding that a genuine firm was in existence for assessment year 1973-74?"

The controversy as noticed in the statement of the case revolves around the continuation of benefit of registration to the assessee firm M/s Kuldip Industrial Corporation Chandigarh under Section 185(1)(a) of the Act. Brief facts of the case could be noticed from the order of the Assessing Officer.

The assessee firm had applied for registration under the provisions of Section 185(1)(a) of the Act in respect of the assessment year 1974-75. The registration was granted under Section 185(1)(a) vide order

dated 17.1.1976. According to the details furnished and instrument of partnership the constitution of the firm for the assessment year 1974-75 was given in detail and one Darshna Devi was shown at serial No. 4 and her share in profit/loss was to the extent of 15 % . She was admitted as partner w.e.f. the financial year relevant to the assessment year 1971-72. The application in form no. 11 and partnership deed for that year have been duly shown to be signed by her. On account of change in the constitution during the relevant assessment year fresh deed of partnership deed was alleged to be written and filed in the office alongwith application in forms No. 11 and 11 A which is also shown to be signed by her. Darshna Devi/ Darshana Gupta was residing at 11, Manali House, Ambala city who is sister-in-law of Shri Kuldip Parskash, Managing partner of the firm (being sister of Kuldip Parkash's wife). She was wife of Shri S.R.Gupta. On the date of inducting as partner she is shown to be residing at Kurukshetra. The Assessing Officer came to the conclusion that she was filing her income tax returns at Ambala whereas return on her behalf had also been filed at Chandigarh. The ITO B Ward, Ambala was requested to record her statement which was done on 14.1.1981 in the presence of Shri A.K..Jain, Income Tax Practitioner who represented Darshana Devi. She is alleged to have stated that she had never been a partner in the assessee firm namely Kuldip Industrial Corporation, Chandigarh. The Assessing Officer also noticed that signatures in the verification column of the income tax returns from 1971-72 onwards do not tally and were different and the signatures attested in the statement recorded by the Income Tax Officer, Ambala is totally different from the signatures of Smt. Darshna Devi which were available with the income tax records and the record of the firm of

Chandigarh. However, the Assessing Officer recorded the conclusion that she has not been a genuine partner as her name has been introduced by the firm with a view to avoid incidence of taxation. Accordingly, the registration originally granted in respect of the assessment year 1972-73 under Section 186(1) of the Act was cancelled vide order dated 28.3.1981. On 14.12.1981 a notice was issued to the assessee firm to show cause as to why registration granted under Section 185(1)(a) on 17.1.1976 should not be cancelled. The assessee firm was also asked to produce Darshna Devi on 18.12.1981 if it so desires. The assessee firm appeared through its counsel and filed written reply that in respect of the previous year the assessee firm had filed appeal before the Commissioner of Income Tax (Appeals), Chandigarh against the order of the Income Tax Officer passed under Section 186(1) cancelling the registration. Accordingly a request was made to await for the result of the appeal before taking the proposed action in respect of the subsequent years. Accordingly, the hearing was deferred to 28.12.1981 and to subsequent dates. However, Smt. Darshna Devi was not produced. On 31.12.1981 the Assessing Officer recorded the finding that Darshna Devi/ Darshna Gupta was one and the same person who had stated in unequivocal terms that she was not a partner in the assessee firm. Consequently, the registration granted on 17.1.1976 under Section 185(1)(a) of the Act was cancelled after obtaining approval of the Inspecting Assistant Commissioner of Income tax Chandigarh Range, Chandigarh. It is appropriate to mention that in respect of the assessment years 1972-73 and 1973-74 and 1974-75 references have been made in these three separate petitions. The matter was taken before the Commissioner of Income Tax (Appeals), Chandigarh who allowed the appeal by holding that Darshana

Devi was partner for the assessment year 1972-73 and later years. It was further held that she had died and the firm was genuine. Accordingly, the Assessing Officer was directed to allow the continuation of registration for assessment year 1972-73 and a direction was also issued to grant renewal of registration to the firm for the assessment year 1973-74.

The revenue feeling aggrieved against the order of the CIT (Appeals) went before the Tribunal and the Tribunal concurred with the view taken by the CIT (Appeals) by observing as under:

> ”The first controversy to be resolved is about the date of filing of the death certificate and whether on 4.3.1982 the last date of hearing, this certificate was in focus. There is no denying the fact that death certificate is dated 5.3.1982 as per order sheet entry in the file of the Commissioner of Income Tax (appeals). The last date of hearing was 4.3.1982. There is no dispute that the date on the covering letter alongwith the death certificate is 4.3.1982. The plea of the assessee has been that during the course of earlier proceedings, the assessee was asked to produce Smt. Darshan Devi. The letter dated 4.3.1982 submitted by the assessee alongwith the death certificate addressed to the Commissioner of Income tax (Appeals) which is in the paper book, intearlia, reads as under:
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> > “ On the last date of hearing you had kindly asked us as to whether Smt. Darshana Devi could be produced even before your honour. Since then, we have been making strenuous efforts to locate her. Ultimately, as a result of those efforts, we came to know that she died on

19.2.1982 at Kurukshetra. A death certificate is submitted herewith."

From this letter it appears that this certificate was intended to be filed on 4.3.1982 before the Commissioner of Income tax (appeals). That is why this letter bears the date as 4.3.1982. As pointed out earlier the death certificate is dated 5.3.1982. This certificate was not with the assessee on 4.3.1982 and, therefore, it could not have been filed on 4.3.1982. Sh. D.S.Gupta, the learned counsel for the assessee produced in original the acknowledgment from the office of the Commissioner of Income-tax (Appeals) to show that the letter dated 4.3.1982 alongwith certificate of death dated 5.3.1982 was filed on 6.3.1982. This fact has not been converted by the learned Departmental Representative. Not only this, this certificate has duly been considered by the Commissioner of Income-tax (appeals) and a finding has been recorded thereon. From these facts it appears probable that the death certificate which was contemplated o be obtained was in focus on 4th March, 1982 the last date of hearing of appeal before the Commissioner of Income-tax (Appeals), It would, therefore, be not unreasonable to presume that the Commissioner of Income-tax (Appeals) allowed the assessee to file this certificate immediately after the same was available. It is in this context that the date mentioned in the covering letter is 4th March, 1982 which inadvertently coul not be corrected while enclosing the death certificate therewith subsequently. It is not

> denied that the Income tax Officer was present at the time of hearing on 4.3.1982. Had any objection been raised by the Income-tax officer about this certificate, that would have definitely found a place in the order of the Commissioner of Income tax (Appeals). We hold accordingly, we further hold that this certificate being in focus on 4.3.1982, during the course of hearing before the Commissioner of Income tax (Appeals) when the Income-tax Officer was also present and he having not raised any issue, it cannot be said that the Income tax Officer was not given any opportunity to rebut the same. We, therefore, do not find any merit in the contention made on behalf of the revenue that opportunity was not given."

The Tribunal further recorded the finding that Darshana Devi expired on 19.2.1982. The basis of fortification of the revenue was bound to fail because the revenue had through out pleaded Darshna Gupta of Ambala was the same lady as Darshna Devi mentioned in the partnership deed. It was conceded position between the parties that Darshna Gupta was still alive. Darshna Devi expired in February 1982. It was on the basis of the afore-mentioned presumption of identity of two ladies, considering them as one, the Assessing Officer had held that the firm was not genuine. The observation of the Tribunal in this regard reads as under:

> " Even on merits, we are of the opinion that once it is held that Smt. Darshana Devi who expired on 19th February, 198 was different lady from Smt. Darshana Gupta of Ambala, the basis of fortification of the revenue is bound to fail. The only case of the revenue has been that Smt. Darshna Gupta of Ambala was

the same lady as Darshna Devi mentioned in the partnership deed. It was a common ground between the parties tha tSmt. Darshna Gupta is still alive while Smt. Darshna Devi expired in February, 1982. This was the only basis of the revenue to hold that the firm was not genuine. While arriving at this conclusion, we have taken into consideration the statement of Shri Kuldip Parkash recorded by the Commissioner of Income tax (Appeals) as also the statement of Shri Roshan Lal. These statements have to be read as a whole and not in isolation. Reading of these statements as a whole will show that Smt. Darshan Devi could not be said to be the same person as Darshna Gupta of Ambala. Before the Commissioner of Income tax (Appeals) the claim of Sh. Kuldip Parkash partner had been that after Smt. Darshan Devi ;left the firm, he lost tough with her and her where abouts could not be known. He continued his efforts to locate her and ultimately it could be found that that she expired in February, 1982 and in support of this, a certificate from the Chief Registrar of Births and Deaths and duly brought on record. This has been considered by the Commissioner of Income Tax (Appeals). This fact is also established by the order of the Commissioner of Income-tax (Appeals) for the assessment years 1975-76 in assessee's appeal no. 718/Chandi/ 81082 dated 30th July, 1982 which reads as under:

> " However, while the appellate proceedings were being taken up I had told that Smt. Darshana Devi be produced

> before me. The appellant showed inability with the plea that said Darshana Devi who had been partner in the appellant firm had died, instead a death certificate was produced before me. The definite evidence that Smt. Darshana Devi was not same as Darshana Gupta. This point has been discussed in detail in my order dated 5.4.1982 in ITA no. 56/1(i) Chd/81082 for the assessment year 1972-73."

In view of the above detailed discussion, we do not find any merit in the appeal of the revenue. The same is, therefore, dismissed."

We have heard the learned counsel for the parties and are of the view that the matter is required to be decided against the revenue.

Question Nos. (i) and (ii),

We find that in para 12 of the order of the Tribunal it has been noticed that death certificate was produced by the assessee firm before the CIT (Appeals) in the presence of the Income Tax Officer and he did not raise any objection. Accordingly it has been rightly held by the Tribunal that once no objection is raised to the admission of the death certificate then it could not concluded that the Income Tax Officer was not granted any opportunity to controvert the contents of death certificate. Therefore, the opportunity envisaged by Rule 46A of the Income Tax Rules would stand satisfied.

Question Nos. (iii)

As far as question no.(iii) is concerned, learned counsel appearing for the revenue could not point out from any material on record to

show that issue regarding genuineness of the firm was questioned before the Tribunal as it has been specifically recorded by the Tribunal in its order that no specific ground was raised before it in the Memorandum of Appeal. Accordingly, question no.3 is answered against the revenue and in favour of the assessee.

Questions No. (iv) to (vi)

As far as questions No.4 to 6 are concerned, from a perusal of unimpeachable material on record, it is evident that Smt. Darshna Devi and Smt. Darshna Devi Gupta were two different persons and on appreciation of evidence, the Tribunal was right in holding that the genuine firm was in existence during the assessment year 1973-74 and the continuance of registration was rightly granted.

The reference is disposed of, accordingly.

(M.M.Kumar)
Judge

(Rajesh Bindal)
Judge

4.4.2007
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